Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-867

EDDIE THOMPSON, JR. - - - - Petitioner

versus

COMMONWEALTH OF KENTUCKY - Respondent

On Petition for Writ of Certiorari to the Supreme Court of Kentucky

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BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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v.

COMMONWEALTH OF KENTUCKY - - *Respondent*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

COUNTERSTATEMENT OF THE QUESTION PRESENTED

Whether the Kentucky Rules of Civil Procedure were properly followed by the various state tribunals.

ORDER AND OPINION BELOW

The Order below from the Supreme Court of Kentucky is styled Eddie Thompson, Jr. v. Commonwealth, which denied the petitioner's motion for a discretionary review of an order of the Kentucky Court of Appeals. Petitioner has correctly set out in his petition the various opinions and orders pertaining to this case.

It should be noted that the substantive opinion involved is the opinion of the Kenton Circuit Court which affirmed the judgment of the Kenton District Court and dismissed the petitioner's appeal.[1] Petitioner's Appendix, 20a. A succinct and accurate statement of the case is correctly set out in the Order of the Kenton District Court denying Petitioner's motion for new trial. Petitioner's Appendix, 13a.

JURISDICTION

Petitioner's application for a Writ of Certiorari should be denied for the reason that said petition does not comply with the requirements of 28 U.S.C. § 1257(3).

Petitioner's allegations are directed toward a declaration that various rules of Kentucky Civil Procedure were either ignored or violated by the various state tribunals. The petitioner *inter alia* contends that the Kenton Circuit Court abused its discretion in ordering that the sentence of the Kenton District Court be executed; that the circuit court clerk conspired to prevent him from filing his appeal and that the Supreme Court of Kentucky acted improperly when "a single judge" denied his appeal.

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[1]Since the petitioner is appearing in a *pro se* capacity, certain procedural errors have occurred in the presentation of this petition. Under the Kentucky Rules of Civil Procedure, the appellant may appeal a judgment of the district court, a court of limited jurisdiction, to the circuit court. In the event the circuit court affirms the judgment, the appellant may present to the Court of Appeals a motion for discretionary review. KCP 72.01, KCP 76.20. Technically this writ should be directed to the Kenton Circuit Court.

Aside from being utterly frivolous, the petitioner has failed to present a significant federal or constitutional question that would allow this Court to invoke its jurisdiction over this matter.

This Court has consistently held that the existence of an independent state ground would preclude review of a related federal question. *Henry* v. *State of Mississippi,* 379 U. S. 443 (1965). In this case, it is obvious that the Opinion of the Supreme Court of Kentucky was entirely based on considerations of state procedural rules and applicable Kentucky decisions. Unless there exists an extraordinary constitutional situation, state interpretations of state statutes are binding on this Court. *Bell* v. *State of Maryland,* 378 U. S. 226 (1964).

The petitioner's application for a writ of certiorari is obviously defective on its face and presents a series of questions that involve questions of state law and procedure. Ordinarily the respondent would briefly respond to the merits of the petitioner's allegations to demonstrate that none of the federal safeguards had been violated by the state. In this instance, however, the petitioner's reasons are so plainly without merit that any further response is unnecessary. See Petitioner's Appendix, 13a-16a.

This petition should be dismissed for the reason that petitioner has failed to comply with the requirements of 28 U.S.C. §1257(3).

CONCLUSION

Since the petitioner has failed to demonstrate that there is a significant federal question to be resolved by this Court and since all of the petitioner's contentions either involve questions of state appellate procedure or unfounded claims of wrongdoing, the petitioner's application for a writ of certiorari should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I, George M. Geoghegan, Jr., one of counsel for respondent herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 21st day of Jauuary, 1980, I served the petitioner with Brief for Respondent in Opposition to Petition for a Writ of Certiorari by placing three (3) copies of the same in the United States mail, first-class postage prepaid, and addressed to Eddie Thompson, Jr., 736 Highland Avenue, Covington, Kentucky 41011, Petitioner Pro Se, and served the Kenton County Attorney by placing one (1) copy of same in the United States mail, first-class postage prepaid, and addressed to Honorable John Elfers, Kenton County Attorney, 304 City-County Building, Covington, Kentucky 41011.

GEORGE M. GEOGHEGAN, JR.
Assistant Attorney General